

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CONRAD MIGHELLS	:	DETERMINATION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1981 and 1982.	:	

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Petitioner, Conrad Mighells, Vollentine Road, Randolph, New York 14772, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1981 and 1982 (File No. 60174).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on March 12, 1987 at 2:00 P.M. Petitioner appeared by Gary M. Kanaley, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's claim for investment tax credit on his purchase of certain equipment used in connection with the preparation of sites for the drilling of oil and gas.

FINDINGS OF FACT

1. Petitioner, Conrad Mighells,<sup>1</sup> timely filed New York State personal income tax returns for the years 1981 and 1982. On his 1981 return, petitioner claimed \$1,442.00 in investment tax

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<sup>1</sup>Although the petition filed in this matter listed both Conrad and Sylvia Mighells as petitioners, the Notice of Deficiency at issue herein was issued only to Conrad Mighells. It is noted that Sylvia Mighells was properly excluded from said notice inasmuch as she did not file joint returns with Conrad Mighells during the years at issue. Accordingly, Conrad Mighells is properly the sole petitioner herein.

credit, and on his 1982 return petitioner claimed \$4,244.00 in investment tax credit.

2. The equipment upon which petitioner's claimed investment tax credit was premised is set forth below:

1981

Description of Property	Cost or Other Basis	Investment Credit
TDSE Dozer	\$29,000.00	\$1,450.00
Drott Loader	30,000.00	1,500.00
Dozer	63,600.00	<u>3,180.00</u>
		\$6,130.00

1982

Description of Property	Cost or Other Basis	Investment Credit
Winch	\$5,500.00	\$275.00
Tractor	2,000.00	<u>120.00</u>
		\$395.00

3. As stated previously, petitioner claimed \$1,442.00 in credit for 1981. The remaining \$4,688.00 of available credit was carried over to 1982. Of this available credit, petitioner claimed \$4,244.00.

4. On April 5, 1985, following an audit of petitioner's returns, the Audit Division issued to petitioner a Notice of Deficiency for the years 1981, 1982 and 1983, asserting tax due for those three years of \$9,716.72, plus interest. Prior to hearing, certain issues were resolved, and remaining in dispute are the amounts claimed by petitioner as qualifying for investment tax credit as set forth above, plus interest.

5. During the period at issue petitioner was primarily in the business of contracting with oil and gas drilling companies to provide certain services related to their drilling activities. Specifically, petitioner constructed access roads to the drilling site and prepared the site itself for drilling. This generally consisted of the removal of trees and brush and the leveling of the drilling site. Additionally, petitioner hauled equipment used in the drilling operations both to and from the drilling site.

6. In preparing sites for drilling, petitioner was sometimes required to pull a gravel truck

onto the site in order to dump gravel over wet or swampy areas. Such wet areas also sometimes necessitated the installation of culverts or sluice pipes to properly prepare the area.

7. With the exception of the tractor, petitioner used all of the equipment for which investment tax credit is claimed herein in the operations described in Findings of Fact "5" and "6". Additionally, all such equipment was used in such operations in excess of 90 percent of its operating time.

8. The tractor upon which credit was claimed in 1982 was not used in connection with petitioner's drilling site activities. Petitioner failed to show that this item was used in production.

#### CONCLUSIONS OF LAW

A. That during the period at issue, section 606(a)(2) of the Tax Law provided, in pertinent part:

"A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property...principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing."

B. That the term "principally used" means "more than 50 percent" (20 NYCRR 103.1[d][3]). In light of Finding of Fact "7" the equipment at issue would qualify for the investment tax credit if it is determined that said equipment was used in the production of gas and oil.

C. That the equipment at issue was not principally used in the production of oil and gas and thus the Audit Division properly disallowed petitioner's claimed investment tax credit. The equipment at issue was principally used in activities which were preparatory to the production process and not part of that process. It is noted that the fact that the equipment at issue may have been essential to production is not of itself a determinative factor with respect to qualifying for

the credit (cf. Matter of Cole Sand and Gravel Corp., State Tax Commission, January 10, 1983).

It is further noted that the failure of the equipment at issue to qualify for the investment tax credit would be unaffected if the equipment at issue were owned and operated by the drilling companies themselves (cf. Matter of John Boadle, State Tax Commission, February 13, 1980 [credit will be allowed for equipment used in providing a service to another business if the purchase of the equipment by the other business would have qualified for the credit]).

D. That the petition of Conrad Mighells is in all respects denied and the Notice of Deficiency dated April 5, 1985, as adjusted (Finding of Fact "4"), is sustained.

DATED: Albany, New York  
September 18, 1987

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ADMINISTRATIVE LAW JUDGE